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NO. _____

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IN THE SUPREME COURT
OF THE
UNITED STATES

October Term, 1989

GLENN D. RAMIREZ,

*Petitioner,*

vs.

OREGON STATE BAR,
OREGON STATE BAR PROFESSIONAL LIABILITY FUND,

*Respondents.*

# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LAW OFFICE OF
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## QUESTIONS PRESENTED FOR REVIEW

1. Is it constitutional for the Respondents to charge private lawyers for liability insurance to practice law in Oregon?

(a) Under this question, governmental and corporate lawyers, although excluded from the requirement, vote to allow it and on the amount to be charged for such insurance.

(b) Petitioner, a private attorney since 1952, was charged under such scheme sums ranging from $450 in 1978 to $2500 in 1989.

2. Does such scheme create an unlawful monopoly?

(a) In insurance?

(b) In the practice of law?

3. Is the scheme so obviously illegal as to constitute racketeering in the minds of reasonable and prudent persons?

4. Can a court agency engage in selling insurance to private lawyers?

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LIABILITY FUND,
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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

The petitioner, Glenn D. Ramirez, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled proceeding on January 16, 1990.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 USCA Section 1257(3). This follows jurisdiction in the United States District Court under 28 USCA Section 1331, 18 USCA Section 1965. Jurisdiction in the Court of Appeals for the Ninth Circuit is under 28 USCA 1291. Jurisdiction in the United States Supreme Court is invoked under 28 USCA Section 1257(3). The Memorandum Opinion of the Court of Appeals for the Ninth Circuit was entered on October 3, 1989, and its Order Denying Rehearing was entered on January 16, 1990.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment I, United States Constitution:

> **Freedom of religion, speech, and press; right to assemble and petition.** Congress shall make no law respecting an establishment of

> religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V, United States Constitution:

> **When prosecution to be by presentment or indictment; double jeopardy; self-incrimination; due process; compensation for property taken for public use.** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, Section 1, United States Constitution:

> **Citizenship; privileges and immunities; due process; equal protection.** All persons born or

naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

15 USCA Section 1, 2 and 1012 of the Sherman Act:

Section 1:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: **Provided,** That nothing contained in sections 1 to 7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law or public policy now or

hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: **Provided further,** That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1 to 7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section 2:

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a

misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section 1012:

(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: **Provided**, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

18 USCA 1962:

(a) It shall be unlawful for any person who has received any income

derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is

> engaged in, or the activities of which affect, interstate or foreign commerce.
>
> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
>
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

Oregon Revised Statutes 9.160, 9.162(1), 9.010(1), 9.080(2), 9.625 and 9.030.

ORS 9.160 provides:

> Except for the right reserved to litigants by ORS 9.320 to prosecute or defend an action in person, no person shall practice law or represent that person as qualified to practice law unless that person is an active member of the Oregon State Bar.

ORS 9.162(1) provides:

> 'Person' means a human being and where appropriate, a public or private corporation, an unincor-

porated association, a partnership, a government or a governmental instrumentality.

ORS 9.010(1) provides:

An attorney, admitted to practice in this state, is an officer of the court; and the Oregon State Bar is a public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon and is authorized to carry out the provisions of ORS 9.030 to 9.755. The bar is subject to the following statutes applicable to public bodies: "..." However, the bar is not subject to any other statute applicable to a state agency, department, board or commission or public body unless such statute expressly provides that it is applicable to the Oregon State Bar.

ORS 9.080(2) provides:

The board shall have the authority to require all active members of the state bar engaged in the private practice of law whose principal offices are in Oregon to carry professional liability insurance and shall be empowered, either by itself or in conjunction with other bar organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization authorized under the laws of the State of Oregon and to establish a

lawyer's professional liability fund. This fund shall pay on behalf of active members of the state bar engaged in the private practice of law whose principal offices are in Oregon, all sums as may be provided under such plan which any such member shall become legally obligated to pay as money damages because of any claim made against such member in rendering or failing to render professional services for others in the member's capacity as an attorney or caused by any other person for whose acts or omissions the member is legally responsible. The board shall have the authority to assess each active member of the state bar engaged in the private practice of law whose principal office is in Oregon for contributions to such fund, to establish definitions of coverage to be provided by such fund and to retain or employ legal counsel to represent such fund and defend and control the defense against any covered claim made against such member. The board shall have the further authority to offer optional professional liability coverage on an underwritten basis above the minimum required coverage limits provided under such fund, either through such fund, through a separate fund or through any insurance organization authorized under the laws of the State of Oregon, and may do whatever is necessary and convenient to implement this provision. Any fund so established shall not be subject to the Insurance Code of the State

of Oregon. Records of a claim against the fund are exempt from disclosure under ORS 192.410 to 192.505.

(b) For purposes of paragraph (a) of this subsection, an attorney is not engaged in the private practice of law if the attorney is a full-time employee of a corporation other than a corporation incorporated under ORS chapter 58, the state, an agency or department thereof, a county, city, special district or any other public or municipal corporation or any instrumentality thereof. However, an attorney who practices law outside of the attorney's full-time employment is engaged in the private practice of law.

ORS 9.625 provides:

The board of governors may adopt a plan to relieve or mitigate pecuniary losses to the clients of active members caused by dishonest conduct of those members in their practice of law. The plan may provide for establishing, administering and dissolving a separate fund and for payments from the fund to reimburse losses and costs and expenses of administering the fund. The board may adopt rules of procedure to carry out the plan. The insurance laws of the state shall not apply to this fund.

ORS 9.030 provides:

> Members shall vote in and be eligible for nomination and election to the board of governors from the region in which they maintain their principal offices.

## STATEMENT

Petitioner filed his Complaint in the United States District Court for Oregon alleging that ORS 9.080(2)(a) was unconstitutional, was a violation of the First, Fifth and Fourteenth Amendment of the United States Constitution, and a violation of the Plaintiff's civil rights under 42 USCA sec. 1983, the Federal Court having jurisdiction under 28 USCA sec. 1331. The basis of Petitioner's challenge was that ORS 9.080(2)(a) abridged the freedom of speech and the right of people to petition the government for redress of grievances, and, took the Plaintiff's money without due process of law under the Fifth and Fourteenth

Amendments of the United States Constitution. Plaintiff alleged that the Defendants had taken $6,760 of his money for liability insurance when such insurance had nothing to do with the qualifications of a person to practice law, was detrimental to the judicial system, and, was the unlawful selling of protection requiring Petitioner to contribute and support said scheme contrary to his personal dignity and pursuit of justice. That the acts of the Defendants were wrongful and oppressive entitling Plaintiff to punitive damages.

As the Second Cause of Action, Petitioner charged an unlawful restraint and control of trade and commerce in the practice of law, including Plaintiff's practice, prohibited by 15 USCA sec. 1 giving Federal Court jurisdiction under

15 USCA sec. 15 entitling Plaintiff to treble damages.

As a Third Cause of Action, Petitioner alleged that this was a racket under 18 USCA sec. 1962 giving a Federal Court jurisdiction under 18 USCA sec. 1965.

Defendants moved for a Summary Judgment, based upon an affidavit of Lester L. Rawls, an employee of the Defendants, administering the Defendants' Professional Liability Fund. It declared that the Fund was in operation since 1978 and had provided legal malpractice insurance coverage for all attorneys in Oregon engaged in the private practice of law; he further alleged that the Oregon State Bar was a public corporation and an instrumentality of the Judicial Department of the State of Oregon with offices in Lake Oswego, Clackamas County, Oregon;

that the 1977 Assembly passed the Act codified as 9.080 giving the Board of Bar Governors authority to require all active members of the state bar engaged in the private practice of law whose principal offices are in Oregon to carry professional liability insurance and to organize an insurance organization to provide such insurance. It further declared that the Board of Bar Governors in 1977 passed a resolution requiring all active members of the Oregon State Bar engaged in the private practice of law to carry professional liability insurance with aggregate limits of not less than $100,000.00 and requiring them to obtain such liability insurance through the Oregon State Bar Professional Liability Fund. It further declared that after the enactment of the statute and adoption of the resolution, the Fund commenced

providing insurance coverage for legal malpractice for active members of the Bar engaged in the private practice of law in Oregon, requiring members to purchase such insurance at a cost assessed by the Board of Bar Governors approved by the Bar and paid to the Fund. That following 1977, attorneys engaged in the private practice of law have been required to contribute the amounts assessed, and the Fund has provided insurance for legal malpractice; that prior to Defendants' Fund going into effect, approximately 35% of the attorneys in private practice in the State of Oregon were without any legal malpractice coverage insurance; that the administration and operation of the Fund is actively supervised by the Bar and direction and supervision of the Fund is provided by a Board of Directors appointed by the Bar; that the only

business of the Fund is legal malpractice insurance, and no other business; that it is not engaged in gambling activities, business of gambling, or the collection of any debts incurred or contracted in the course of gambling activity or in the business of gambling. That the Fund has not engaged in the business of lending money or making loans and has not collected or attempted to collect any debts, the collection of which are unenforceable because of any laws relating to usury.

Additionally, the Defendants filed the Affidavit of their Attorney, that the resolution providing liability insurance and requiring attorneys to purchase it from the Defendants was adopted in 1977.

The Plaintiff, Petitioner herein, filed a Counter Affidavit as follows:

> I was admitted to the Bar of the State of Oregon in 1952, and have

been engaged in private practice since said time to the present. I have paid the required Bar dues and the contributions to the clients' security fund as required by the Oregon State Bar. Prior to the establishment of the Oregon State Bar Professional Liability Fund (FUND), I carried malpractice insurance on which the annual premium was less than $500.00 per year. Since the commencement of the Fund operations, the premiums started at $450.00 a year and has escalated to $2,500.00 a year, in addition to the Bar dues and contributions to the clients' security fund. That I paid the premium under protest.

2. The defendants occupy offices at the same address in the city of Lake Oswego, Clackamas County, Oregon.

3. ORS 9.080 and its passage by the Oregon State Legislature was largely influenced by the Oregon State Bar and individuals acting on its behalf.

4. The 1977 Board of Bar Governors' Resolution was passed by the influence of the same group of individuals that influenced the Oregon State Legislature in passing ORS 9.080. This was based on a finding that 40% of Oregon lawyers did not have malpractice insurance, no findings of losses to public was made.

5. From the initial history of the Fund, it appears that the Fund had no reserves from which to pay claims for legal malpractice and was in fact procuring insurance from other companies by the use of the initial premiums required, using the excess to build up a reserve, and that initially the amounts charged were comparable with private insurance premiums. Instead of purchasing insurance, I was purchasing protection from the Fund in that it was necessary to pay such protection to remain a member of the Oregon State Bar and to be able to continue practice. The Bar solicited opinions from the Courts and public officials as to the legality of such protection.

6. The protection provided by the Fund is to the members of the Bar and not to the public in that an attorney must be insured whether or not he has injured clients, and injured clients can only recover if they follow the rules of a policy of which they had no notice. If a client makes a claim after an attorney has discontinued practice, there is no protection even though there was coverage when the attorney performed. Cantwell v. Estate of Goakey and Coe and Fund, garnisher, CA A36657, SC S32843.

7. Due to the high cost of the premiums charged by the Funds, I and other attorneys are required to charge their clients more to offset said costs, denying substantial

members of the public legal assistance, and covering the rest of the attorneys who take more than they can handle at my expense.

8. In 1985 and 1986, I had occasion to present a claim against the Fund for the negligent actions of two attorneys, O. W. Goakey and Hal I. Coe, who were insured by the Fund and against whom a judgment had been obtained by Lee and Gloria Cantwell. This claim was in the form of a garnishment and demand for payment. A judgment had been taken against these two attorneys and entered in the favor of the Cantwells for $24,194.00 with interest of $9,140.00, plus interest, and costs of $221.95. However, instead of paying said liability as required by the law and the insurance coverage, the Fund filed a complaint with the Oregon State Bar, attempting to charge misconduct on my part for asserting the claim by appointing a representative for the estate of the deceased, O. W. Goakey, to have an entity against whom a judgment could be taken after the Fund and widow of the deceased had refused to either set up the estate or represent the estate after it was established. Thereafter in argument before the Oregon Court of Appeals, the attorney representing the fund argued that they had sought and obtained the opinions of judges of both the Court of Appeals and Oregon Supreme Court, specifically suggesting that the Chief Justices

of both Courts as well as those of other judges and officials had privately approved the interpretation that the Fund was seeking to deny the Cantwells' claim. The Court of Appeals and the Supreme Court denied the appeal and review of the Cantwells' without opinion.

9. I believe ORS 9.080 2a is unconstitutional in that it permits the defendants to place a restriction on free spirit by permitting them to make an unlawful charge for the exercise thereof by me as an attorney. It is in restraint of trade in that I am required to buy insurance (protection) from them and the proceeds of such unlawful collections create a potential for unlawful influence of public and judicial officials so as to constitute racketeering under RICO 18 USCA sec. 1962. It is money taken by illegal process without due process in law and constitutes an attempt by the Oregon State Bar to set up an illegal industry to collect monies under the guise and title of insurance premiums and set a legal malpractice insurance monopoly at expense of plaintiff.

10. The Fund's annual assessment has caused many Oregon lawyers to resign, withdraw or quit the law thereby making them ineligible to practice law in Oregon, which unlawfully reduces competition and my business.

11. That my practice and the general practice of law affect persons in interstate commerce in the United States.

## REASONS FOR GRANTING THE PETITION

Under the foregoing scheme, the Oregon State Bar (herein referred to as the "Bar") commenced collecting liability insurance for the Oregon State Bar Professional Liability Fund (herein referred to as the "Fund") from Petitioner and members of the Bar in private practice in 1978 initially charged $450.00 per year therefor and escalating to $2500.00 in 1989.

Petitioner paid the above liability premiums under protest. He contended that these charges affected the charges to his clients, as well as the charges of other attorneys to their clients, and, caused many Oregon attorneys to withdraw from the practice of law in Oregon. In

addition, in open court proceedings before the Oregon Appellate Court, it was made to appear that the Oregon Appellate Judges had assisted in the drafting of the Fund's coverage provisions and interpreted such coverage provisions adverse to Petitioner's client in a pending garnishment case.

The Bar did not explain the meteoric rise in premiums, but, did affirm that it was not engaged in gambling or related activities.

Petitioner is, and has been, a member of the Bar since 1952 engaged in private practice and, was paying less than $500.00 per year for malpractice insurance in 1977. He paid the premiums required by the Bar to practice law in Oregon under protest, and is contending that said premiums were unconstitutionally extorted from him for an illegal

purpose. Petitioner wants judgment for his money back plus penalties and attorney fees and costs, and a declaration that the aforesaid scheme is unconstitutional and must be discontinued.

Bar dues from 1977 to 1989 increased from $125.00 to $252.00 as compared to Bar premiums of $450.00 to $2500.00 for the same period. This is taking into consideration the inclusion of a clients' security fund in Bar dues as provided under ORS 9.625.

Although Petitioner is seeking a personal recovery from the Defendants, based upon an unconstitutional charge made upon him to practice law, the questions presented have far more reaching significance. Insurance is for a profit. The profit promotes greed and greed is a virus that cannot be stopped

without drastic consequences once it has spread. The seriousness of the problem is compounded by its direct attack upon the United States Constitution, attack by limiting and controlling those who would defend it. The case is without precedent on the issue of constitutionality. There is no legal constitutional interpretation which would give governmental and corporate lawyers the right to regulate lawyers in private practice making them subject to an insurance charge while exempting governmental and corporate lawyers from such charge.

The District Court erred in failing to recognize that separating lawyers in private practice as a class was one thing and allowing them to be regulated by exempt lawyers is another. Greed carries with itself a two-way evil. First, it takes what it can and second, it is

willing to sacrifice others for its own wrong as long as it doesn't cost itself anything. Let's regulate private practice with an insurance assessment we don't have to pay.

The effect is not personal just to the Petitioner and Oregon, as greed is not a contained virus. Consider the effect of a $2500 assessment on a new or prospectively new lawyer. He has his school to pay back, his new family, set up expenses and dues, before he opens his doors. Now add $2500 on to that - up front. Corporate and governmental practice eliminate these requirements. The effect of the assessment is to eliminate the option of private practice to the new lawyer. It controls private practice to those who can pay rather than those who are qualified to practice.

In their Affidavit in Support of Motion for Summary Judgment, Defendants asserted that thirty-five (35%) percent of the attorneys in private practice in Oregon were without liability insurance.

There is no issue in this Petition regarding the authority of the Legislature to regulate the practice of law so as not to interfere with the action of the Judiciary, and, for that purpose, to provide the cost of qualifying procedures. These costs are acceptable burdens on the exercise of constitutional privileges and rights. Liability premiums are not qualifying and undermine the power of the Constitution to protect itself by taking away the lawyers that would do so. There is not factual or legal authority in support of the legality or constitutionality of

liability insurance as a requirement to practice law.

The case of Hass v. Oregon State Bar USDC Civil Number 87-196-JU appealed to the United States Court of Appeals for the Ninth Circuit, Case Number 87-3996 is a stipulated case on the issue of the Anti-Trust effect of the liability insurance. The Honorable George Juba, Magistrate of the United States District Court for Oregon summarized that suit as being one for Declaratory Judgment as to whether the professional liability insurance challenged herein was constitutional under the commerce Clause of the United States and whether it violated Federal Anti-Trust Laws. The parties had stipulated that the Oregon Legislature passed ORS 9.080(2)(a) as above, that a resolution of the Board of Bar Governors was passed requiring all

lawyers in private practice to carry liability insurance. He then found that the language of the Sherman Act was not intended to limit actions of the State, and was therefore exempt from the Federal Anti-Trust Laws. It further found that the Commerce Clause was intended to restrict the power of states to interfere with Interstate Commerce, but that public interest in being adequately protected from legal malpractice outweighed its burden on Interstate Commerce. As the findings of the Magistrate exceeded the stipulation, the question of the policy declaring powers of the Magistrate, and its summary of facts without such facts poses a question of due process. This was not challenged in the Court of Appeals for the Ninth Circuit. It was expanded to include additional arguments with a dissenting opinion. The

difference between the majority and dissenting opinion was whether or not the insurance monopoly established in favor of the Bar was subject to the Anti-Trust provisions of the Sherman Act because it was not subject to State regulation under the provision of ORS 9.010(1):

> ...the bar is not subject to any other statute applicable to a state agency, department, board or commission or public body unless such statute expressly provides that it is applicable to the Oregon State Bar.

and ORS 9.080(2)(a):

> ...Any fund so established shall not be subject to the Insurance Code of the State of Oregon. Records of a claim against the fund are exempt from disclosure under ORS 192.410 to 192.505.

Although the Hass case did not deal with Petitioner's First, Fifth and Fourteenth Amendment claims, the District Judge in the instant case combined Petitioner's claims under these rights to be covered by the State right to regulate

the practice of law thereby finding that taking $2500.00 per year of his money to practice law did not deprive him of his property without due process of law under the Fourteenth Amendment nor the Fifth Amendment, nor did it breach his rights under the First Amendment of the United States Constitution. The Court was impressed by four index pages of irrelevant cases ranging from bar dues to the regulation of raisins, allowing for some assessments, including insurance, to engage in the various enterprises. There is a substantial difference between qualifying to practice and setting forth an onerous and illegal condition of practice. No public need was established for legal liability insurance in Oregon or elsewhere.

Petitioner, in this appeal, maintains that the Bar charging him (and the

entire privately law practicing membership) liability insurance to practice law is unconstitutional under the United States Constitution because it unconstitutionally controls the membership by the size of the premium, the conditions of insurance and the Court agency writing the contract with the consultation of the court which will interpret it.

This should be distinguished from qualifying Petitioner (and membership) to practice law and charging the costs of such qualification. Bar dues, license fees or similar charges to maintain a Bar are not relevant here. The issue here involves disqualification from the practice of law in the private sector if you don't pay the Bar Insurance. This leaves the governmental and corporate attorneys exempt under the law and those who are in

control or wish to protect their assets. Who's left to protect the Constitution?

Petitioner has standing to challenge the constitutional nature of the charge, first under the statute ORS 9.080 being a legislative authorization for a non-qualifying but controlling charge on attorneys and the defendants collecting such charge from Petitioner. The judiciary is affected in that it is from the lawyers that we draw our judiciary.

The rights of the Petitioner to practice law are protected under the First Amendment.

United Mine Workers v. Illinois Bar Association, 389 U.S. 217, 19 L. Ed. 2d 426, 88 S. Ct. 343 (1967), 19 L. Ed. 2d 430:

> We start with the premise of the rights to assemble peaceably and to petition for redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are

> intimately connected both in origin and in purpose with the other First Amendment rights of free speech and free press. All these, though not identical, are inseparable...The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraint so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have, therefore, repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because there are enacted for the dealing with some evil within the state's legislative competence or even because the laws do in fact provide a helpful means of dealing with such an evil...

Schware v. State Board of Bar Examiners of New Mexico, 353 U.S. 232 1 L. Ed. 2d 796, 77 S. Ct. 752 (at 1 L. Ed. 2d 801):

> A state cannot exclude a person from the practice of law or from any other occupation in any manner or for reasons that contravene the due process or equal protection of the Fourteenth Amendment ... A state can require high standards or qualification such as good moral character or proficiency in its law, before it admits an applicant to the bar, that any qualification must

> have a rational connection with the applicant's fitness or capacity to practice law ... Obviously an applicant cannot be excluded merely because he is a republican or a negro or a member of a particular church. Even in applying permissible standards, officers of the state cannot exclude an applicant when there is no basis for their finding that he fails to meet any standards, or when their action is impediously discriminatory...

Abood v. Detroit Board of Education, 431 U.S. 209, 52 L. Ed. 2d 261 97 S. Ct. 1782 (52 L. Ed. 2d at page 283):

> The decisions of this Court establish within mistakable clarity that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendment.

Bar dues to serve the ends of improving the quality of legal service available to the people of this state are a legitimate and a state policy. Lathrop v. Donohue, 367 U.S. 820, 6 L. Ed. 2d 1191, 81 S. Ct. 1826.

Nowhere in any of the authorities or in the instant case is insurance designated as a quality necessary to practice law or that buying insurance from the Respondents is such a legal qualification.

SHERMAN'S ANTI-TRUST ACT 15
UNITED STATES CODE ANNOTATED
SECTION 1, SECTION 15, SECTION 1012

Giving the Oregon State Bar the exclusive right to force lawyers to buy liability insurance from it, not subject to supervision by the Insurance Code of Oregon, is a prohibited monopoly under the Sherman Anti-Trust Act 15 USCA 15.

The Oregon State Bar is subject to regulation under the Sherman Anti-Trust Act. USA V. Oregon State Bar, 384 F. Supp. 507 (1974, USDC).

The argument suggested in the Court of Appeals for the Ninth Circuit case of Hass v. Oregon State Bar, is that if not

regulated by the Legislature, it is regulated by the Board of Bar Governors.

As the requirement of insurance was made by government and corporation lawyers exempting themselves from such provisions and such private lawyers who attended the Bar meeting to impose the requirement of insurance on private lawyers it is constitutionally unfair. Then to have them govern the insurance through their Board of Bar Governors perpetuates the oppression. It is a regulation of the practice of law by practicing lawyers exempt from their own regulation.

In view of the seriousness of the initial problem, i.e. the Respondents collecting insurance from the Petitioner to permit the Petitioner to practice law in Oregon, constitutes a serious violation of the Sherman Anti-Trust Act 15

USCA Section 1. This is criminal under 15 USCA Section 2. Unless it is exempt under 15 Section 1012, which deals with the regulation of insurance which is exempt if not regulated under State law. In the present case, we have liability insurance as expressly declared to be not regulated under State law.

The Defendants argue that because it is subject to regulation by the Board of Bar Governors, that it is regulated under State law. Such that is regulated by both covered and noncovered members, i.e. government, corporation, and lawyers in private practice, it is a self-regulated monopoly with one group oppressing those subject to it. The wrong is organizing a monopoly to squeeze out private lawyers. The fact that lawyers are charging other lawyers makes it no less an illegal monopoly. There is an element of

unfairness where under Bar authority one group of lawyers can charge another insurance to practice law. If they're selling insurance, it's a monopoly.

Under 15 USCA section 1:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restrain of trade or commerce among the several States, or with foreign nations, is declared to be illegal (exceptions are provided which do not apply in this case)

Under 15 USCA section 2:

> Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor...

An exemption for insurance is provided under 15 USCA Section 1012, which provides that the business of insurance shall be subject to the laws of several states which regulate or tax such business. It specifically provides that

the Sherman Act shall be applicable to the business of insurance to the extent that such business is not regulated by state law.

ORS 9.080 provides that the liability insurance issued by the Bar shall not be subject to the insurance laws of the State of Oregon. Thus, without regulation, it is subject to the Sherman Act. And, being subject to regulation by the Sherman Act and in violation thereof, it is subject to the penalties therein provided.

SELLING FORCED INSURANCE CONSTITUTES RACKETEERING

Under 18 USCA Section 1962, if it is unlawful for the Defendants to force the Petitioner to purchase insurance from them to practice law, it would be unlawful for them to collect money from the Petitioner and invest it in the insurance business which it has operated and main-

tained under the designation of the Fund and subjects the Defendants to the penalties provided therein.

## CONCLUSION

WHEREFORE, a Writ of Certiorari should issue to review the decisions of the lower Courts herein permitting the Defendants to collect insurance premiums from Petitioner to practice law in Oregon in violation of the First, Fifth, and Fourteenth Amendments of the United States Constitution, and in violation of the Sherman Act prohibiting such monopolies and the RICO Act prohibiting such actions.

Respectfully submitted,

GLENN D. RAMIREZ
Petitioner and Attorney
in Pro Se

APPENDIX A

[U.S. DISTRICT COURT
DISTRICT OF OREGON
Southern Division
F I L E D Jun 20, 1988
ROBERT M. CHRIST, CLERK
By/s/_____, Deputy]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

| | | |
|---|---|---|
| GLENN D. RAMIREZ<br><br>Plaintiff,<br><br>v.<br><br>OREGON STATE BAR, et al.,<br><br>Defendant. | ) | Civil No. 87-6625<br><br>O R D E R<br><br>(Defendant's Motion for Summary Judgment) |

The court has now before it a motion for summary judgment by defendants. Said motion is made on the grounds that there are no genuine issues of material fact, and defendants are entitled to judgment as a matter of law. The motion is opposed.

Plaintiff is a member of the Oregon State Bar. As a member of the Oregon

State Bar, plaintiff is required to carry professional liability insurance which must be obtained through the Oregon State Bar Professional Liability Fund. This requirement, which is challenged by plaintiff, is specifically authorized by an act which was passed by the Oregon Legislative Assembly and is codified as ORS 9.080, which provides as follows:

> (2)(a) The Board [Board of Bar Governors] shall have the authority to require all active members of the State Bar engaged in private practice of law whose principal offices are in Oregon to carry professional liability insurance and shall be empowered, either by itself or in conjunction with other bar organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize, and sponsor any insurance organization authorized under the laws of the State of Oregon and to establish a lawyers professional liability fund.

Plaintiff's complaint asserts three claims. First, plaintiff asserts that the statute authorizing the creation of a

professional liability fund is unconstitutional and in violation of plaintiff's civil rights. Second, plaintiff asserts that the operation of the professional liability fund is a violation of the Sherman Act. Plaintiff's third claim is that the collection of assessments by the professional liability fund is in violation of Title 18, United States code, Section 1962 (Racketeer Influenced and Corrupt Organizations, "RICO").

Plaintiff's first claim, alleging that the statute authorizing the defendants to establish the professional liability fund is unconstitutional, asserts as its basis in law the First, Fifth, and Fourteenth Amendments to the United States Constitution. Beginning with the First Amendment issue, plaintiff's pleading does not suggest how the operation of the professional liability

fund in any manner interferes with the right of free speech or the right to petition for redress of grievances. Since plaintiff's opposition to defendants' motion for summary judgment provides no factual support for his First Amendment claims, defendants are entitled to dismissal of same. Architectural Building Products, Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir. 1987).

Plaintiff's Fifth Amendment claim is equally deficient. Plaintiff quite simply has failed to show how the Oregon State Bar professional liability fund deprives him of due process of law. States have broad power to regulate the practice of law. The license to practice, the continuation thereof, the regulation of practice, and procedure for disbarment and discipline, are all within

the province of the states. United Mine Workers v. Illinois Bar Association, 389 U.S. 217 (1967). The requirements of annual registration and the payment of annual fees to engage in the practice of law do not violate due process guarantees nor deny equal protection. Ables v. Jones, 587 F.2d 850 (6th Cir. 1978).

Furthermore, it has been held that the maintenance of medical malpractice insurance as a condition to licensing does not offend or violate due process. Pollock v. Methodist Hospital, 392 F. Supp. 393, 396 (E.D. La. 1975). In Pollock, the court held that the doctor whose privilege to practice was suspended after he failed to comply with a malpractice insurance requirement had no remedy and no property interest sufficient to invoke the due process requirements of the Fourteenth Amendment. Obtaining and

maintenance of medical malpractice insurance as a condition to licensing bears a rational relationship to the health and welfare of the citizens of the state by providing protection to patients who may be injured as a result of medical malpractice, and therefore does not violate the guarantees of due process. Jones v. State Board of Medicine, 555 P.2d 399, 408 (Idaho 1976), cert. denied, 431 U.S. 914 (1977).

It logically follows that a mandatory requirement that attorneys maintain legal malpractice insurance as a condition of practicing law is equally inoffensive to the Constitution. This conclusion is supported by the case of Lathrop v. Donahue, 367 U.S. 820, 843 (1961), where the court said:

> We think that the Supreme Court of Wisconsin, in order to further the state s legitimate interests in raising the quality of professional

> services, may constitutionally require that the costs of improving the profession in this fashion should be shared by the subjects and beneficiaries of the regulatory program, the lawyers...

Plaintiff also contends that he is denied equal protection guaranteed him under the Fourteenth Amendment as a result of the legislative classification of persons under ORS 9.200, which requires members of the Oregon Bar to pay fees and dues. This court has no right to interfere with the legislative classification of persons under ORS 9.200 if that classification is rationally related to a valid state objection. Martin v. Walton, 368 U.S. 25 (1961); Schware v. Board of Bar Examiners, 353 U.S. 232, 239 (1957). As Justice Power said in McGinnis v. Royster, 410 U.S. 263, 276 (1973):

> [L]egislative solutions must be respected if the "distinctions drawn have some basis in practical

> experience." South Carolina v. Katzenbach, 383 U.S. 301, 331 (1966) ....

In the present case, ORS 9.200 empowers the Oregon State Bar to implement ORS 9.080 by requiring its members to pay for professional liability insurance. The court finds that the legislative classification in question is rationally related to a valid state objective, specifically, protecting those injured by attorney malpractice. "The prohibition of the Equal Protection Clause goes no further than the invidious discrimination." Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 489 (1955). Thus ORS 9.200 does not violate the Equal Protection Clause of the Fourteenth Amendment.

Defendants are entitled to summary judgment on plaintiff's first claim.

Plaintiff's second claim alleges that the defendants conspired to restrain and control trade and commerce in the practice of law in violation of Section 1 of the Sherman Act. It has previously been decided in this district that:

> Because the establishment of the Professional Liability Fund and the elimination of competition in the provision of minimum legal malpractice insurance was clearly contemplated by the State legislature, and is actively supervised by the State, the Board of Bar Governors' resolution challenged here is exempt from the federal antitrust laws by virtue of the stated action doctrine.

Hass v. Oregon State Bar, No. 87-196-JU Civil at 6 (D. Or. June 12, 1987). The court in the instant case concurs in the Hass decision.

Defendants are entitled to summary judgment on plaintiff's second claim.

Plaintiff's third and final claim is that the acts of defendants constituted a violation of 18 U.S.C. sec. 1962, RICO,

asserting that the Oregon State Bar was in essence engaged in illicit activities and attempted to collect an unlawful debt as a result of said activities. Therefore, plaintiff argues, the defendants violated the provisions of RICO entitling him to recovery under 18 U.S.C. sec. 1964. The court considers this claim to be absolutely frivolous and not worthy of further discussion since it is abundantly clear that RICO was never meant to apply to situations remotely resembling that of the case at bar.

Defendants are entitled to summary judgment as to plaintiff's third claim.

The clerk of the court shall enter a judgment dismissing plaintiff's complaint with prejudice.

DATED at Anchorage, Alaska, this 17th day of June, 1988.

/s/ H. R. HOLLAND
United States District Judge

APPENDIX B

[F I L E D
Oct 3 1989
CATHY A. CATTERSON,
Clerk
U.S. COURT OF APPEALS]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | | |
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| GLENN D. RAMIREZ, | ) | |
| | ) | |
| Plaintiff-Appellant, | ) | NO. 88-3972 |
| | ) | |
| vs. | ) | D.C. No. 87-6625 |
| | ) | |
| OREGON STATE BAR, OREGON STATE BAR PROFESSIONAL LIABILITY FUND, and DOES 1 through 100, | ) | MEMORANDUM* |
| | ) | |
| Defendants-Appellees. | ) | |

Appeal from the United States District Court for the District of Oregon
H. Russel Holland, District Judge, Presiding
Argued and Submitted September 14, 1989
Portland, Oregon
Before: PREGERSON, TROTT, RYMER, Circuit Judges

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Glenn D. Ramirez ("Ramirez") appeals pro se from the district court's order granting summary judgment in favor of the Oregon State Bar ("the Bar") and the Oregon State Bar Professional Liability Fund ("the Fund"). Ramirez argues that: (1) Or. Rev. Stat. sec. 9.080(2)(a), which requires all active members of the Bar whose principal offices are in Oregon to carry malpractice insurance issued by the Fund, violates the First, Fifth, and Fourteenth Amendments of the United States Constitution; (2) Or. Rev. Stat. sec. 9.080(2)(a) impermissibly restrains trade in violation of the Sherman Antitrust Act, 15 U.S.C. sec. 1 (1982); and (3) by requiring that Ramirez purchase malpractice insurance from the fund, appellees have violated the Racketeer Influenced and Corrupt Organizations

Act (RICO), 18 U.S.C. secs. 1961-1968. We affirm the district court.

I.

Ramirez is member of the Bar. Pursuant to Or. Rev. Stat. sec. 9.080(2)(a),[1] "all active members of the Bar engaged in the private practice of law whose principal offices are in Oregon" are required to carry professional liability insurance issued by the Fund. Section 9.080(2)(b) provides that

> an attorney is not engaged in the private practice of law if the attorney is a full time employee of a corporation . . .,the state, an agency or department thereof, a county, city, special district or any other public or municipal corporation or any instrumentality thereof.

Or. Rev. Stat. sec. 9.080(2)(b) (1987).

In the district court s view, appellant's failure to explain how the statute operates to interfere with his right of free speech or his right to petition for redress of grievances warranted summary judgment in appellees' favor. The district court further held that appellant had failed to demonstrate how the mandatory malpractice provision operates to deprive him of property without due process of law. The court also concluded that the legislative classifications set forth in the statute are rationally related to a valid state objective and therefore do not violate the Equal Protection Clause of the Fourteenth Amendment. Finally, the court held that the statute is exempt from the antitrust laws by virtue of the state action doctrine and that appellant's RICO claim

is "absolutely frivolous." We review de novo a grant of summary judgment. California Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir. 1987), cert. denied., __ U.S. __, 108 S. Ct. 698, 98 L. Ed. 2d 650 (1988).

II.

Although fashioned as a single claim for relief, appellant's first claim actually consists of three claims: (1) the statute impermissibly discriminates against appellant in violation of the Equal Protection Clause of the Fourteenth Amendment; (2) the statute deprives appellant of property without due process; (3) the statute abridges appellant's right of free speech. We deal with each claim in turn.

Equal Protection

Appellant argues that the statute violates the equal protection clause of the fourteenth amendment because it discriminates against a certain class of lawyers: those engaged in "the private practice of law." A legislative classification based on the nature and status of an attorney's clientele/employer neither infringes on a fundamental right, see Lupert v. California State Bar, 761 F.2d 1325, 1327, n.2 (9th Cir.)(discrimination based on whether law student attends accredited or unaccredited law school does not infringe upon fundamental right), cert. denied, 474 U.S. 916, 106 S. Ct. 241, 88 L. Ed. 2d 251 (1985); Edelstein v. Wilentz, 812 F.2d 128, 132 (3rd Cir. 1987)(no fundamental right to practice law), nor discriminates against a suspect

class. Accordingly, the statute is subjected to rational basis scrutiny. Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976). We have also noted that "(t)he Supreme Court is extremely deferential to legislative classifications in actions challenging regulation of licensed professions." Lupert, 761 F.2d at 1328 (citing Williamson v. Lee Optical, 348 U.S. 483, 487-489, 75 S. Ct. 461, 99 L. Ed. 563 (1955)).

The application of the statute solely to attorneys engaged in private practice is rationally related to the harm the legislature sought to remedy: namely, protecting public litigants from attorneys who commit malpractice. The exemption for attorneys employed by governmental entities or corporations reflects a logical nexus between the

class of persons the statute seeks to protect and those members of the Bar who might be in a position to cause harm.

There is also no support for appellant's claim that the additional economic burden imposed on him constitutes a violation of the equal protection clause. Whatever additional costs may be imposed on appellant by operation of the statute are undoubtedly passed along to his clients. The state may rationally conclude that the benefits which accrue from ensuring that attorneys have malpractice insurance coverage outweigh whatever additional costs of legal representation the statute may create. See Person v. Assn. of Bar of City of New York, 554 F.2d 534, 538-39 (2d Cir.)(New York legislature could rationally find that benefits accruing from state bar disciplinary rule prohibiting contingent

expert fee arrangements outweigh obstacles to financing litigation), cert. denied, 434 U.S. 924, 98 S. Ct. 403, 54 L. Ed. 2d 282 (1977).

Due Process

Appellant also failed to come forward with any evidence in support of his claim that the statute violates his right to due process of law. The statute does not interfere with appellant's ability to practice law and, as already noted, is rationally related to the state's interest in protecting its citizens from attorney malpractice.

First Amendment

The district court also correctly found that appellant had failed to come forward with any evidence in support of his claim that the statute operates to interfere with his right of free speech or his right to petition for

redress of grievances. Ramirez does not explain how the statute "would chill an attorney's speech in the context of his or her professional conduct." Edelstein, 812 F.2d at 133 (rejecting attorney's First Amendment challenge to New Jersey rule granting immunity to ethics grievants).

III.

As we recently decided, the statute withstands appellant's antitrust challenge. See Hass v. Oregon State Bar, No. 87-3996 (9th Cir. August 30, 1989). We agree with the district court's conclusion that appellant's RICO claim is "absolutely frivolous."

IV.

Accordingly, we affirm the district court's order. Each side to bear its own costs on appeal.

endnotes

1. Hass v. Oregon State Bar, No. 87-3996, (9th Cir. August 30, 1989, a related case, traced the evolution of sec. 9.080:

> In 1977, exercising its delegated authority, the Board [of directors of the State Bar] passed a resolution, effective July 1, 1978, requiring all Oregon-based attorneys to carry malpractice coverage with aggregate limits of not less than $100,000 [subsequently raised to $300,000]. The resolution also established the fund contemplated in sec. 9.080(2)(a), which the Board denominated [the fund]. The resolution further provided that the required malpractice coverage for all active members in the private practice of law, with the exception of patent attorneys, shall be obtained through the Fund.
>
> Pursuant to the foregoing resolution, Oregon-based attorneys have been required, since 1978, to participate in the Fund, and the Fund has provided such attorneys with legal malpractice coverage. An Oregon-based attorney's failure to participate in the Fund results in suspension from membership in the Bar.

Id. at 10309-10. (emphasis in original).

APPENDIX C

[F I L E D
JAN 16, 1990
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | | |
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| GLENN D. RAMIREZ, | ) | |
| | ) | NO. 88-3972 |
| Plaintiff-Appellant, | ) | |
| | ) | D.C. No. CV87-6625-H |
| v. | ) | |
| | ) | ORDER |
| OREGON STATE BAR, OREGON STATE BAR PROFESSIONAL LIABILITY FUND, and DOES 1 through 100, | ) | |
| | ) | |
| Defendants-Appellees. | ) | |

Before: PREGERSON, TROTT, and RYMER, Circuit Judges.

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and

no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.